IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19871 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MEHSANA DISTRICT CO.OP.MILK PRODUCERS UNION LTD. - Petitioner(s)

Versus

EMPLOYEES STATE INSURANCE CORP. & 1 - Respondent(s)

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Appearance :

MR AJAY R MEHTA for Petitioner(s) : 1,
MR HEMANT S SHAH for Respondent(s) : 1,
MS ARCHANA RAVAL, ld. AGP for Respondent(s) : 2,
NOTICE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 20/02/2006

ORAL JUDGMENT

1. Rule. Shri Hemant Shah, learned advocate waives service of rule on behalf of respondent No.1 and Ms Archana Raval, learned AGP waives service of rule on

behalf of respondent NO.2.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner – Mehsana District Co.Op. Milk Producers Union Ltd. has prayed for appropriate writ, direction and/or order quashing and setting aside the order passed by the Employees State Insurance Corporation – respondent No.1 herein seeking recovery of the amount from the petitioner as dues of ESI contribution and further to permanently restrain them from seeking recovery. By way of another prayer, the petitioner has prayed for appropriate writ, direction and/or order directing respondent No.2 – State Government to grant the application for exemption for the respective periods.

3. Shri Mehta, learned advocate appearing on behalf of the petitioner has submitted that earlier, the petitioner – Dairy was enjoying the exemption from applicability of the ESI Act, 1948 since 1982 and initially by order dated 2-6-1987, the exemption on operation of the ESI Act is granted from 2-10-1982 and thereafter, every year, the exemption has been extended and the said exemption has been continued upto 1-10-2002. It is the contention of

the petitioner that for the subsequent years, the applications were given and now the same are under consideration by the State Government.

4. At this stage, Shri Hemant Shah, learned advocate appearing on behalf of respondent No.1 has submitted that by communications dated 21-6-2003 and 21-1-2004, the application submitted by the petitioner for exemption with effect from 2-1-2002 has already been rejected and therefore, the Corporation is justified in making the recovery on ESI contribution. At this stage, Shri Mehta has drawn the attention of the court to the latest communication dated 8-12-2005 by which the Section Officer of the Labour and Employment Department, State of Gujarat has informed the petitioner that granting of exemption from applicability of the ESI Act with effect from 2002 under Section 87 and 91(a) of the ESI Act, 1948 is under active consideration of the State Government and on taking final decision, the Dairy will be informed accordingly.

5. In that view of the matter and without expressing any opinion on merits, respondent No.2 is directed to take appropriate decision in accordance with law and on

merits with regard to the exemption to be granted in favour of the petitioner – Dairy or not and such a decision be taken as early as possible, preferably within a period of two months from the date of receipt of this order and communicate the outcome of the same to the petitioner as well as the respondent No.1. As stated above, this court has not expressed any opinion with regard to granting of such exemption or not, it is ultimately for the appropriate authority to take appropriate decision in accordance with law and on merits. Till then the appropriate decision is taken as stated above, respondent No.1 is restrained from making any recovery. However, it is made clear and as agreed by the learned advocate appearing on behalf of the petitioner that if the exemption is not granted, it will be open for respondent No.1 to make recovery in accordance with law, however, without issuing any fresh notice.

6. With the above observation and direction, this petition is disposed of. Rule is made absolute with the aforesaid extent. However, there will be no order as to costs. DS permitted.

(M.R.SHAH,J.)

shekhar/-